UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,647	05/25/2001	Tetsurou Koide	253A 3052	4545

7590   08/10/2007

KODA & ANDROLIA
SUITE - 1140
2029 Century Park East
Los Angeles, CA 90067-2983

EXAMINER
BARTLEY, KENNETH

ART UNIT	PAPER NUMBER
3693	

MAIL DATE	DELIVERY MODE
08/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 May 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   Receipt of Applicant's amendment and responses filed on May 15, 2007 is

acknowledged.

Response to Amendment

2.   Claims 1, 2, 3, 5, 6, 9, 11, 13, and 16 are currently amended. Claims 1-17 are

pending in the application and are provided to be examined upon their merits.

3.   The objection to the drawings is withdrawn.

4.   The objections to the abstract are withdrawn.

5.   The objections to the specification are withdrawn.

6.   The objections to claims 1, 3, 6, 9, and 13 for informalities are withdrawn.

The Examiner thanks the Applicant for making the above changes.

Response to Arguments

7.   Applicant's arguments filed May 15, 2007 have been fully considered but they are

not persuasive.

8.   Regarding Applicant's response to 35 U.S.C. 103 rejections under "Remarks":

        a.   Applicant argues on page 11, last paragraph:

        "Applicant has carefully reviewed Stein et al. and respectfully submits that Stein
        et al. appears to be directed to a system to be utilized by brokers and client
        managers and not by individual clients who are buying commodities such as
        precious metals."

The Examiner respectfully believes that the Applicant is defining individual clients to be retail customers, and that only these clients can have access to the system. However, the Examiner does not see such limitations in either the Applicant's claims or specification. Also, the Examiner notes from Applicant's specification:

"In keeping with the principles of the present invention, the objects are accomplished by the fixed-monetary-amount purchasing system, in which client servers of clients are connected to a main server of a purchasing organization via internet." ¶ [0013]

Client/server is defined as "An arrangement used on LANs (local area networks) that makes use of distributed intelligence to treat both server and individual worstations as intelligent..." (Microsoft Computer Dictionary, 2002, 5th Edition, Microsoft Press, pg. 102). The Applicant is stating that individual clients access the system through a client server, but inherent in a LAN is a network of connected workstations, indicating more then one individual has access to the system.

The Examiner also notes that Stein et al. discloses a WAN (col. 14, lines 38-41), of which would include the Internet.

b.   Applicant continues on page 11, last paragraph:

"... Applicant's invention as claimed requires: "storing all of said purchased merchandise in protective custody for said client accounts in each instance" (see step (d) of Applicant's claim 1). Applicant's review of Stein et al. indicates that it does not disclose this step."

The Examiner agrees that Stein et al. does not teach this step, but as pointed out in the Office Action, Bard discloses the step, where... "The bullion is stored in London or Delaware; Merrill Lynch charges no storage or insurance fees." (pg. 76, middle col., 2nd paragraph). In the same paragraph Bard discloses investors can sell all or part of their holdings at any time, so presumably they can store all of the bullion.

Also, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

c.   Applicant argues on page 12, first paragraph:

"Applicant... respectfully submits that while Bard mentions a "program",
Applicant's analysis indicates that it is not a software program and merely
describes a process offered by particular companies to assist people in
purchasing and accumulating precious metals and points."

**The Examiner agrees that Bard is focused on describing a process of dollar
cost averaging and storage of precious metals, however, as pointed out in
the Office Action, it would have been obvious to combine such a process
with the system of Stein et al..**

Applicant continues in the same paragraph... "..Applicant respectfully submits
that Bard does not disclose or suggest the step (d) of Applicant's claims."

The Examiner disagrees for the reasons cited above.

d.   The Applicant summarizes rejections 1-9 and 11-16 on page 12, second
paragraph: .

"In view of the above, therefore, Applicant respectfully submits that the
combination suggested by the Examiner is not Applicant's invention and claims
1-9 and 11-16 are not obvious over Stein et al. in view of Bard."

**The Examiner disagrees for the reasons cited above. Bard discloses dollar
cost averaging for precious metals as well as storage. While Bard does not
disclose if the system is computerized, it seems likely that it would be.
Bard discloses Merrill Lynch Commodities as providing dollar-cost
averaging for precious metals and Stein et al. provides a computer system
for handling commodity transactions, of which Merrill Lynch is the
assignee. Therefore, it seems likely Merrill Lynch could easily integrate
their commodity systems.**

e.   On page 12, 3rd and 4th paragraphs, regarding claims 10 and 17, the...

Applicant incorporates by reference earlier remarks and adds...
"...Applicant respectfully submits that A-Mark discloses the kinds of services
which would be provided by precious metal and coin dealer and the "Videomelt"
is not an image of the merchandise stored in protective custody which is
displayed by the client server in accordance with the types and weight of the
merchandise, as is required by Applicant's claim 17.

**The Examiner notes that the Office Action combined A-Mark with Stein, et
al. and Bard and that..."A-Mark maintains depository relationships in major
financial centers throughout the world" and provides "Liquid 2-way market,
buying and selling" (pg. 2 of 6).**

>The Examiner also notes that VideoMelt™ provides an...
>"... exclusive method of furnishing virtual witnessing by the customer via color video tape of the complete process for verification of results."
>
>While VideoMelt™ uses videotape, the Examiner in the Office Action used a 103 rejection of obviousness to combine the videotape for use over a network for viewing precious metal stored.
>
>Also, "A-M Handling's exclusive method of receiving material wherein the customer does not disclose the weight or expected amount of fine precious metals contained therein to A-MH's assayers, assuring an unbiased, independent and fair settlement result." (pg. 5 of 6). Therefore, for the assay to take place requires the type and weight of the merchandise.

9.   Based on the foregoing analysis, the Examiner maintains rejection of the pending claims over their prior rejection.

10.   Below is presented the claim rejections, which have been modified to include consideration of the amended claims (changes shown in bold).

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.

3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
obviousness or nonobviousness.

13.   Claims 1-9 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable

over U.S Patent 5,978,779 to Stein, et al., in view of Bard (Purchase Precious Metals

through Monthly Investments, Susan M. Bard, Commodities, March 1982, Vol. 11, Iss.

3, pp. 76, 78) **and in further view of Official Notice**.

Regarding applicant claims 1, 3, 4, and 11-15, Stein, et al., discloses:

a.   A system for purchasing commodities (col. 3, lines 47-55);

b.   The creation and storing of client information in a database (col. 2, lines

30-36) and a method of registering new clients (col. 5, lines 29-37);

c.   A ledger that contains client information and any relationships, related

document information, which presumably could include purchasing agreements,

and deposit information (col. 6, lines 66-67 and col. 7, line 1);

d.   Information stored in a database regarding client purchases and

sales/deliveries related to products and services (col. 6, lines 21-26);

e.   Bank information added to a ledger of a client so the client has account

information regarding purchase/sell transactions with financial institutions (col. 6,

lines 26-33);

f.   A system server to create and modify client information, to enter and

modify transactions (such as purchases), and to view the ledger (col. 10, lines

26-31), which provides a summary of client holdings that would indicate the

presence or absence of a payment (col. 7, lines 3-9) into an account;

g. A system server connecting clients and counterparties by electronic means (col. 10, lines 14-18 and Fig. 3) able to perform various described functions, which could include various commercial transactions with a counterparty. A "Library" for retrieving and sending forms needed for creation and transaction between clients and counterparty (col. 10, lines 44-47).

h. Various settlement and transaction methods through which payment may occur, including SWIFT and Fed Wire, which could provide net banking (col. 6, lines 33-38);

i. Clients can determine how deposited money will be invested (col. 5, lines 11-23), which presumably could include purchasing merchandise on each business day with an amount equal to a fixed-monetary purchase of a commodity. This could also include using a loan charge as a fund for spot purchases;

j. "...at least one database for storing data about (i) said client and any related counterparty to said client, (ii) said financial product, and (iii) activity, positions, and balances for said client, said at least one database accessible through said network..." (col. 2, lines 52-56). Purchase weight information would be available from activity (purchase price) and balances (determined from weight x market price/unit weight);

k. A product master database, which includes information about all products (e.g. precious metals in this case) that an entity buys and sells (col. 14, lines 26-33), which would allow client to sell merchandise and transfer funds into the

client account. Since the valuation of precious metal transactions is determined

by weight, presumably the database would include the weight of the metal.

Further, the database provides for product tracking and analysis capability;

l.   Multiple ledgers associated with a single client, where each ledger

provides transactions associated with a particular relationship (col. 9, lines 15-

21).

Stein, et al., demonstrates a system for transacting commodities and where a

counterparty can act as a guarantor for a client (col. 4, lines 46-51), but does not

provide details of a "fixed-monetary-amount" purchasing system or information

regarding precious metal holdings such as an exchange of merchandise or a storage

method. Bard discloses a "fixed-monetary-amount" investment programs, and a way to

exchange and store precious metals. Merill Lynch Commodities manager states "If the

price goes down, it merely means an investor can purchase more ounces than if the

price were higher." Several other companies, including Gold Standard Corp., also

provide a cost averaging approach. Gold Standard also has the ability to exchange

merchandise by switching "holdings to/from gold, silver or platinum." Regarding

storage, Merrill Lynch provides storage for investors with no fee. Therefore, it would

have been obvious to a person of ordinary skill in the art at the time the invention was

made for Stein, et al., to add a "fixed-monetary-amount" purchasing system to increase

investment in precious metals, consider allowing investors to switch their commodities

as an added service to clients, and to provide for precious metal storage as a

convenience to customers. It is noticed that the assignee of Stein, et al., is Merrill
Lynch, Pierce, Fenner & Smith.

**While the above references provide for a system where commodities can be
purchased using a primary server, they do not disclose the location of the server.
However, the Examiner takes Official Notice that locating a server with a
purchaser is old and well known. Therefore, it would have been obvious to one
skilled in the art at the time of invention to locate a main server with a purchasing
organization, and that such a location, for example, would provide important
market information to a purchaser regarding their clients.**

**Also, while the above references provide for a system with a wide area network
(WAN), they do not disclose "an internet." However, the Examiner takes Official
Notice that considering an internet or the Internet to be a WAN is old and well
known. Therefore, it would have been obvious to one skilled in the art at the time
of invention to include an internet or the Internet in their system as a matter of
design choice, and that such a system would provide improved access to clients.**

14.   Regarding claim 2, Stein, et al., discloses:

      a.   Provisional client information is entered into the system electronically
during a pre-approval process (col. 5, lines 50-60), and once approved entered
as approved in the system (col. 5, lines 37-42);

b.   Client has access to their "virtual" ledger (col. 7, lines 25-28), indicating that they have been approved and are in the system.

15.   Regarding claim 5, Stein, et al., discloses a plurality of stations communicating through a network, at least one database for storing data about a client and related counterparty and for activity, positions, and balances for the client (col. 2, lines 51-56). A client has the option to determine confirmation preferences (col. 5, lines 42-49), which could presumably be set following execution of purchases of merchandise.

16.   Regarding claims 6-9, Stein, et al., provides for:

a.   Access of a main server to client database (col. 10, lines 30-43 and Fig. 3), and client access to balances via a network (col. 2, lines 54-56);

b.   Access to counterparties products (col. 3, lines 52-55) that could include merchandise stored in protective custody;

c.   A "Library processing center," where a client can receive required documents for certain transactions (col. 6, lines 55-58), (e.g. sale or return of merchandise) and the client could receive confirmation of the transaction, where the transaction would normally include updating database(s) (col. 5, lines 42-49);

d.   An "internal ledger" that has the "inventory of an instrument" and also a transaction error processing capability, which presumably would prevent negative inventory (col. 7, lines 29-35) and which could allow for re-application or the ability to automatically dispense the inventory balance;

e.   Client has capability of deciding where monies are to be deposited from sales (col. 6, lines 21-26).

17.   Regarding claim 16, Stein, et al., allows for users to enter information and
request(s) or command(s) through a "graphical user interface" (col. 14, lines 41-43),
where a "graphical user interface" would include graphical images such as menus as
defined in Microsoft Computer Dictionary (Microsoft Computer Dictionary, Fifth Edition,
Microsoft Press, Redmond, WA. 2002). Therefore an inquiry could provide account
information such as balances.

18.   Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable
over the references as combined in section (13), above, in further view of A-Mark (A-
Mark web site dated 05/06/1998).

19.   Although the references as combined in section (13), above, disclose a
purchasing system and a computer network with a graphical interface, they do not
disclose providing limit-orders or images of merchandise held in protective custody. A-
Mark provides an order execution where trade occurs at a particular trading price as
well as "Videomelt," a videotape that allows customers to witness that their precious
metal was handled professionally and that a fair assay took place. Therefore, it would
have been obvious to a person of ordinary skill in the art at the time the invention was
made to provide a market-limit order ability as well as an image over the network, as per
applicant claims 10 and 17, since a market-limit order can enhance returns and the
network would provide the convenience of on-demand images to customers.

Conclusion

20.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kenneth L. Bartley whose telephone number is (571)

272-5230. The examiner can normally be reached on Monday through Friday, 8:00 -

5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jagdish Patel can be reached on (571) 272-6748. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

8-1-07

JAMES A. KRAMER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600